

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is made and entered into as of July 5, 2022, by and between the COUNTY OF FRESNO (“County of Fresno”) and LEXINGTON INSURANCE COMPANY (“Lexington”) on the one hand, and CITY OF FRESNO (“COF”), on the other hand. The aforementioned individuals and entities are collectively referred to as the “Parties” or individually as “Party.”

RECITALS

A. WHEREAS, the County of Fresno owns the Brix-Mercer Building located at 1221 Fulton Avenue, in Fresno California, which was insured by Lexington (hereafter the “Premises”);

B. WHEREAS, on or about October 17, 2018, a water main owned and operated by COF burst, which resulted in water entering the premises and causing damage to the Premises. Said damage was alleged to have been substantially caused by the burst water main, an allegation that COF denied;

C. WHEREAS, the County of Fresno tendered its insurance deductible of Twenty-Five Thousand dollars (\$25,000) to Lexington and filed a claim on the Premises associated with the broken water main. Lexington thereafter paid in excess of \$11,046,016.30 towards the claim and sought subrogation from COF for the payments made to the County of Fresno;

D. WHEREAS, the Parties attempted to resolve the matter through formal mediation before formal litigation commenced, but was unsuccessful;

E. WHEREAS, the County of Fresno and Lexington filed a Complaint on October 14, 2021 in Fresno County Superior Court as Case No. 21CECG03058 (the “Civil Action”), alleging that because of the October 17, 2018 burst water main, damages resulted to the Premises and that COF was liable for inverse condemnation to the County of Fresno and Lexington, among other claims.

F. WHEREAS, COF deny the allegations of the Civil Action and contend, among other things, that the County of Fresno was actually the substantial cause of the damages sustained to the Premises (the “Defenses”);

WHEREAS, the Parties desire to settle, release, compromise and forever discharge all issues, claims, demands, disputes and causes of action arising out of the Civil Action and all claims asserted, or that could have been asserted in the Civil Action and have reached agreement disposing of their respective issues, claims, demands, disputes and causes of action arising out of damages in the Civil Action; and

G. NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

SETTLEMENT TERMS

1. **Dismissal of Superior Court Action.** Upon successful negotiation of payment by COF as provided in Paragraph 2, the County of Fresno and Lexington shall file a request for dismissal in the Civil Action, requesting dismissal of the entire action of all parties and all causes of action with prejudice, with each party bearing its own attorney's fees and costs.

2. **Payment and Consideration.** Within 30 days of receipt of the fully executed Settlement Agreement, COF agrees to pay the total sum of Six Million Twenty-Five Thousand Dollars and no/100 (\$6,025,000.00) by check made payable to the Denenberg Tuffley Client Trust Account and said check shall be delivered to the attention of David Denton and Media Benjamin by way of federal express and/or wire. Of said amount, Lexington shall receive \$6,000,000 and the County of Fresno shall receive \$25,000.

3. **Mutual General Release of All Claims.** Except for the obligations created by or acknowledged in this Agreement, and the exceptions noted herein, the Parties, on behalf of themselves and their respective heirs, assigns, executors, administrators, successors, legatees, representatives, contractors, elected officials, unelected officials, councils, committees, shareholders, members, managers, owners, employees, attorneys, insurers, officers, trustees, directors, partners, members, employees, agents, affiliates, subsidiaries, members companies, division, parent companies, including Safety National Casualty Corporation, indemnitors, and agents fully release each other, and each other's heirs, assigns, executors, administrators, successors, legatees, representatives, contractors, elected officials, unelected officials, councils, committees, attorneys, insurers, agents, officers, trustees, directors, partners, members, employees, agents, affiliates, subsidiaries, members companies, division, parent companies (the "Releasees"), from all claims, demands, fees, costs, monies, liens, interests, debts, causes of action, judgments, settlements and damages of any kind whatsoever, in law or in equity, whether known or unknown, suspected or unsuspected, from the beginning of time until the date of the execution of this Agreement, that arise from or are otherwise related to (i) the October 17, 2018 burst water main at the Premises and the resulting damages to the Premises, and/or (ii) the Civil Action and the facts alleged therein.

4. **Waiver of Unknown Claims.** The Parties acknowledge that they may hereafter discover facts different from, or in addition to, what they know or believe to be true with respect to the matters herein released arising from or related to the Civil Action, and agree that the Mutual General Release set forth in Section 3 above shall be and remain in effect in all aspects as a complete and general release as to the matters released, notwithstanding any such difference or additional facts. The Parties acknowledge that they have been informed of Section 1542 of the Civil Code of the State of California, and do hereby expressly waive and relinquish all rights and benefits which they may have under Section 1542, which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have

materially affected his or her settlement with the debtor or released party.

County of Fresno and Lexington understand and acknowledge that the significance and consequence of this waiver of section 1542 of the Civil Code is that even if County of Fresno and Lexington should eventually suffer additional damages arising out of the above-described incident /Civil Action, County of Fresno and Lexington will not be permitted to make any claim for those damages. County of Fresno and Lexington further acknowledge that County of Fresno and Lexington intend these consequences even as to claims or damages that may exist as of the date of this Settlement Agreement that arise from and/or are related to the above- referenced Civil Action, but which County of Fresno and Lexington do not know exist, and which, if known, would materially affect their decision to execute this Settlement Agreement, regardless of whether County of Fresno and Lexington's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause. County of Fresno and Lexington knowingly and voluntarily assume the risk that the facts or law may be different than what they presently believe.

The Parties WAIVE the provisions of Section 1542 of the California Civil Code or any similar statutes, laws, or principles of any jurisdiction which may apply to this Agreement.

5. **Jurisdiction and Venue.** The validity, construction, interpretation and enforcement of this Agreement and its terms and provisions shall be governed by the laws of the State of California. The parties further agree that the Superior Court for the County of Fresno, State of California shall have jurisdiction over, and be the proper venue for, any disputes arising out of this Agreement.

6. **Severability.** Should any provision of this Agreement require interpretation or construction, the Parties agree that the presumption that a document or agreement is to be interpreted or construed more strictly against the Party who or which prepared such document or agreement, shall not apply. Should any provision of this Agreement be declared or determined to be illegal, invalid, or unenforceable, the validity of the remaining provisions shall not be affected.

7. **No Admission of Liability, Res Judicata or Estoppel.** This Agreement contains a release of disputed claims. It is understood by all Parties that this Agreement does not constitute an admission of liability, but is entered into solely as and for a compromise settlement of such disputed claims. The Parties also agree that nothing in this Agreement shall be used for any purpose other than the limited disclosure for remedy of breach of this Agreement.

8. **No Other Claims.** The Parties represent that no other suit, claim, or proceeding has been commenced against the other(s) regarding the any of the claims released herein, and that no causes of action or claims released herein have been assigned to any other individual or entity. If any such suit, claim, or proceeding is discovered, the offending Party, at its sole expense, shall take whatever steps are necessary to resolve the same without any ramifications on the other Parties, and without any cost or action required on the part of the other Parties, to this Agreement.

9. **Representations And Warranties.** The Parties represent and warrant to each other that this Agreement is made by each of them in reliance upon the following:

- (a) That the claims of the Parties and any causes of action or the proceeds thereof that are the subject of this Agreement have not previously been transferred, assigned, or quitclaimed to any person or entity not a party to this Agreement, and no other person or entity has or claims any interest therein or thereto.
- (b) Each Party to this Agreement is legally competent to execute this Agreement and accepts fully the responsibility therefor.
- (c) That no Party is aware of any latent defect and/or any environmental issue impacting the Project.
- (d) The representations, warranties, and covenants of the Parties shall remain in full force and effect and shall survive the payment of the settlement proceeds and the dismissals described herein.
- (e) The Parties acknowledge that they have been represented in the negotiations for, and in the preparation of, this Agreement by counsel of their choosing and/or have had the opportunity to retain counsel. The Parties represent that they have read this Agreement, know and understand the terms of this Agreement and its legal effect, that they have executed it voluntarily, that they have not been influenced by any persons or other parties, and that they have authority to sign this Agreement.

10. **No Assignment and No Third-Party Beneficiary.** Each of the Parties hereto represents and warrants that it has the power and authority to enter into this Agreement and has not assigned or otherwise conveyed, or attempted to convey, any rights released or obligations set forth herein, unless otherwise stated in this Agreement. Likewise, the Parties agree there are no third-party beneficiaries to which this Agreement extends.

11. **Further Assurances and Covenant of Good Faith Cooperation.** The Parties covenant to, upon the reasonable request by any Party, at any time and from time to time, cooperate reasonably with each other and to take all such further actions, including without limitation the execution and filing of additional instruments or documents, as may be reasonably necessary to carry out the intent, purposes and terms of this Agreement.

12. **No Oral Modification; No Waiver.** The Parties expressly understand, acknowledge and agree that this Agreement may be modified or rescinded only by a writing signed by each of the Parties hereto or their duly authorized agents. Moreover, the failure of a Party to this Agreement to exercise any right or remedy provided by the Agreement or by law shall not be a waiver of any obligation or right of the Parties, or of any similar default, nor shall it constitute a modification of this Agreement.

13. **Fully Integrated Agreement.** This Agreement constitutes the entire integrated agreement between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between them. The Parties acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, and that they have not executed this Agreement in reliance on any such representation.

14. **Attorneys' Fees and Costs Recoverable.** If suit, claim, or proceeding is commenced by any Party hereto concerning this Agreement, or to recover damages for the breach of any of the terms or provisions hereunder, or to enforce any such term or provision or otherwise concerning the rights, duties or obligations of any Party hereunder, the prevailing party in any such suit, claim, or proceeding, in addition to such other relief as may be granted, shall be entitled to any and all attorneys' fees and costs incurred in connection therewith, which shall be fixed in such suit, claim or proceeding, or in a separate claim brought for that purpose.

15. **Counterparts.** Copies of this Agreement and attachments may be signed as counterparts by one or more Parties hereto and shall have the same force and effect as if an original single document had been signed by all Parties.

16. **Section Headings.** The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

17. **Parties to Bear Their Own Costs.** Except as provided in Section 14, each Party hereto will bear their own costs and attorneys' fees incurred in connection with the Project, the claims released herein, the negotiation of this Agreement, and the performance of this Agreement.

THE UNDERSIGNED HAVE READ THE FOREGOING SETTLEMENT AGREEMENT, HAVE DISCUSSED THE CONTENTS WITH THEIR RESPECTIVE COUNSEL, OR HAVE HAD THE OPPORTUNITY TO DISCUSS THE CONTENTS WITH THEIR RESPECTIVE COUNSEL, AND FULLY UNDERSTAND THE TERMS OF THE SETTLEMENT AGREEMENT, AND ASSENT TO ITS TERMS AND PROVISIONS.


DATED: ~~July~~ 9, 2022
Aug

COUNTY OF FRESNO

ATTEST:

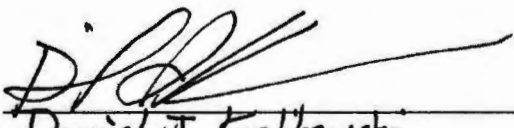
BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

By: 
Name: Brian Pacheco
Title: Chairman of the Board of Supervisors

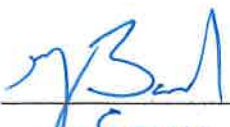
DATED: July 25, 2022

LEXINGTON INSURANCE COMPANY

By: 
Name: Daniel J. Kunkowski
Title: Attorney in Fact

DATED: July 26, 2022

CITY OF FRESNO

By: 
Name: Gregory Berhelt
Title: Acting City Manager

FOR ACCOUNTING USE ONLY:

Fund/Subclass: **1060/10000**

ORG No: **89250100**

Account No: **1860**